

NOV 14 2007

JEANNE G. QUINATA
Clerk of Court

1 THOMAS McKEE TARPLEY, JR.
2 A Professional Corporation
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9
10 FORREST BOOTH (Cal. Bar No. 74166) (Admitted *pro hac vice*)
11 RYAN C. DONLON (Cal. Bar No. 229292) (Admitted *pro hac vice*)
12 SEVERSON & WERSON
13 A Professional Corporation
14 One Embarcadero Center, Suite 2600
15 San Francisco, CA 94111
16 Telephone: (415) 398-3344
17 Facsimile: (415) 956-0439
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20 Attorneys for Defendant, Cross-Claimant and
21 Counterclaimant S.J. GARGRAVE SYNDICATE 2724

22
23
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27
28 **IN THE DISTRICT COURT OF GUAM**
TERRITORY OF GUAM

29 UNITED STATES OF AMERICA,

Case No.: 1:06-CV-00011

30 Plaintiff,

**DECLARATION OF FORREST
BOOTH IN SUPPORT OF MOTION
FOR LEAVE TO FILE THIRD-PARTY
COMPLAINT OF S.J. GARGRAVE
SYNDICATE 2724 AGAINST
NAVIGATORS PROTECTION &
INDEMNITY**

31 vs.

32 INCHCAPE SHIPPING SERVICES GUAM,
33 LLC,

34 Plaintiff in Intervention,
35
36 vs.

Complaint Date: April 19, 2006
Trial Date: May 12, 2008

37 MARWAN SHIPPING & TRADING CO.,
38 FIVE SEAS SHIPPING CO., LLC, and S.J.
39 GARGRAVE SYNDICATE 2724, *in
40 personam*,

41 Defendants.

42
43
44 AND CROSS-CLAIMS, COUNTERCLAIM,
45 AND CLAIM IN INTERVENTION

S.J. GARGRAVE SYNDICATE 2724.

Third-Party Plaintiff,

VS.

**5 NAVIGATORS PROTECTION &
INDEMNITY,**

Third-Party Defendant.

I, Forrest Booth, declare:

10 1. I am an attorney duly licensed to practice law before all courts in the State of
11 California, and am admitted *pro hac vice* herein. I am a member of the law firm of Severson &
12 Werson, counsel of record for Defendant, Cross-Claimant and Counterclaimant S.J. GARGRAVE
13 SYNDICATE 2724 (hereinafter “Gargrave”).

14 2. I have personal knowledge of the facts stated in this Declaration, and if called as a
15 witness to testify as to them, I can and will competently do so.

16 3. On July 24, 2006, I filed a Third-Party Complaint herein, on behalf of Gargrave,
17 against NAVIGATORS PROTECTION & INDEMNITY (“Navigators”) and AL-BUHAIRA
18 NATIONAL INSURANCE COMPANY (“Al-Buhaira”). Said Third-Party Complaint alleged
19 that Navigators had misrepresented material facts, and failed to disclose other material facts,
20 during the application for the Certificate of Financial Responsibility (“COFR”) and policy of
21 pollution insurance underwritten for the M/V AJMAN 2 by Gargrave. Discovery later disclosed
22 that these were not viable claims against Navigators.

23 4. Accordingly, a dismissal dated January 31, 2007 was filed on February 1, 2007,
24 dismissing Navigators, without prejudice, from this litigation.

25 5. Attached hereto and marked as Exhibit A is a true and correct copy of the Petition
26 of Stanley L. Gibson to Appear *Pro Hac Vice* and Consent of Designated Co-Counsel, filed
27 herein on April 3, 2007. Since the filing of this petition, Mr. Gibson has been acting as counsel
28 for Navigators herein, and also in the closely related action entitled *Jose D. Leon Guerrero*

1 *Commercial Port and M.J. Harrington Syndicate 2000 v. Marwan Shipping & Trading Company,*
2 *LLC, Sharjah, et al.*, Civil Action Case No. 07-00010 in this Court (hereinafter the “Port’s
3 lawsuit”).

4 6. Attached hereto and marked as Exhibit B is a true and correct copy of the Order
5 Granting Petitions of Stanley L. Gibson and Ellen G. Lauck for Admission *Pro Hac Vice*, which
6 was signed and filed herein by Magistrate Judge Manibusan on April 12, 2007.

7 7. I am counsel for plaintiff M.J. HARRINGTON SYNDICATE 2000 (hereinafter
8 “Harrington”) in the Port’s lawsuit. As a result, I am familiar with the pleadings and discovery in
9 that matter, as well as the pleadings and discovery herein.

10 8. Discovery in this action and the Port’s lawsuit has disclosed that Titan Industries
11 (“Titan”), the salvage contractor retained by the U.S. Government to deal with the
12 M/V AJMAN 2 disaster, performed and billed for services involved in salvaging the vessel in
13 August of 2004. Salvage expenses are typically insured under a vessel’s hull and machinery
14 insurance policy.

15 9. Discovery in this action and the Port’s lawsuit has disclosed that Titan performed
16 services in August of 2004 for the removal of the wreck of the M/V AJMAN 2 from Family
17 Beach in Apra Harbor, Guam. Attached hereto and marked as Exhibit C is a true and correct
18 copy of the cover page, as well as of page 2 of the “Risks Insured” section, of Navigators’
19 Certificate of Protection and Indemnity Insurance No. LN04PN1000169, issued to Marwan
20 Shipping & Trading Co. and insuring the vessel AJMAN 2. Page 2 of the Risks Insured section
21 contains paragraph 5 entitled “Liabilities for the Removal of a Wreck”.

22 10. All parties in the Port’s lawsuit have agreed to a mediation of the dispute, to be
23 held in London, England, during the week of December 3, 2007. Counsel are discussing
24 resolving that matter, and it is possible that the case will be settled before the mediation convenes.
25 Navigators, through their San Francisco-based legal counsel (Mr. Gibson), have agreed to
26 participate in that mediation.

27 11. My clients are syndicates of Underwriters at Lloyds, London. From time to time
28 the lead claims adjuster at the Gargrave Syndicate has had direct conversations about the

1 AJMAN 2 claims with employees of Navigators in London. The Gargrave Syndicate was told on
2 a number of occasions that Navigators would be willing to engage in a mediation of the
3 AJMAN 2 disputes, but only if the Port's lawsuit and this action were mediated together, as a
4 package. Attached hereto and marked as Exhibit D is a true and correct copy of the relevant
5 portion of an email from Gargrave's Senior Claims Adjuster Myles Sunley to me, dated
6 October 2, 2007, stating that Navigators had represented to him that Navigators wished to
7 "conclude" (settle) both the pollution and pier damage cases "in the same negotiation."

8 12. On November 2, this Court dismissed without prejudice the Amended Complaint
9 in Intervention filed by Inchcape Shipping Services Guam LLC (hereinafter "Inchcape"). As of
10 that date, Navigators was no longer a party to this lawsuit.

11 13. On several occasions in late October and November 2007, I have had telephone
12 conversations with Mr. Gibson, counsel for Navigators. During those conversations, Mr. Gibson
13 advised me that his client is no longer interested in mediating this action, because Navigators is
14 no longer a party to this lawsuit, and therefore, in his view, is no longer involved.

15 14. It is my understanding that one of the reasons the parties originally agreed to set
16 aside two days for the London mediation was that one day would be devoted to resolving the
17 Port's lawsuit, and one day to resolving this lawsuit.

18 15. In my opinion, based on 30 years as a maritime lawyer, this action brought by the
19 United States is readily susceptible of settlement. Counsel for defendants Marwan Shipping &
20 Trading Co., Five Seas Shipping Co., LLC and Al-Buhaira have indicated to me that their clients
21 are desirous of settling this lawsuit.

22 16. Mr. Gibson, counsel for Navigators, has indicated to me that he is prepared to
23 travel to London to participate in one or two days of mediation during the week of December 3,
24 2007, the dates currently agreed upon for mediation, although he has not yet agreed to mediate
25 this dispute at the same time as the Port's lawsuit.

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1 Sworn this 8th day of November, 2007, under penalty of perjury under the laws of the
2 State of California and of the United States at San Francisco, California.

3 By: 
4 _____
5 FORREST BOOTH

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CERTIFICATE OF SERVICE

I, Dorothea Quichocho, hereby certify pursuant to Rule 5(d) Fed. R. Civ. P. that on November 14, 2007, I caused to be served a true and correct copy of the DECLARATION OF FORREST BOOTH IN SUPPORT OF MOTION FOR LEAVE TO THIRD-PARTY COMPLAINT OF S. J. GARGRAVE SYNDICATE 2724 AGAINST NAVIGATORS PROTECTION & INDEMNITY, to the following:

Mike W. Schwab, Esq.
OFFICE OF THE U.S. ATTORNEY
108 Hernan Cortez Avenue, Suite 500
Hagatna, Guam 96910

R. Michael Underhill
Attorney in Charge, West Coast Office
MIMI MOON
Trial Attorney
Torts Branch, Civil Division
U.S. DEPARTMENT OF JUSTICE
450 Golden Gate Avenue, Room 7-5395
P.O. Box 36028
San Francisco, CA 94102-3463
[Courtesy copy]

Attorneys for Plaintiff and Counterdefendant United States of America

Lawrence J. Teker, Esq.
TEKER TORRES & TEKER, P.C.
Suite 2-A, 130 Aspinall Avenue
Hagatna 96910-5018, Guam

John E.D. Powell, Esq.
CAIRNCROSS & HEMPELMANN, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
[Courtesy copy]

Attorneys for Defendants and Cross-Defendants Marwan Shipping & Trading Co.; Five Seas Shipping Co., LLC; and Al-Buhaira National Insurance Company

Thomas C. Sterling, Esq.
BLAIR STERLING JOHNSON MARTINEZ &
LEON GUERRERO, P.C.
Suite 1008, DNA Building
238 Archbishop F.C. Flores Street
Hagatna, Guam 96910-5205

Stanley L. Gibson, Esq.
GIBSON ROBB & LINDH LLP
100 First Street, 27th Floor
San Francisco, CA 94105
[Courtesy copy]

*Attorneys for Defendant Navigators Insurance Co., dba
Navigators Protection & Indemnity*

1 David P. Ledger, Esq.
2 Elyze J. McDonald, Esq.
2 CARLSMITH BALL LLP
3 Bank of Hawaii Building, Suite 401
3 134 West Soledad Avenue
4 Hagatna, Guam 96910

5 *Attorneys for Third Party Defendant Inchcape Shipping Services Guam LLC*

6
7 Dated this 14 day of November, 2007.

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10 
DOROTHY QUICHOCHO

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Exhibit A

1 THOMAS C. STERLING
2 BLAIR STERLING JOHNSON MARTINEZ & LEON GUERRERO
A Professional Corporation
3 Suite 1008 Pacific News Building
238 Archbishop F.C. Flores Street
4 Hagatna, Guam 96910-5205
Telephone: (671) 477-7857
Fax: (671) 472-4290

5
6 STANLEY L. GIBSON (Cal. Bar No. 047882) (pro hac vice petition pending)
ELLEN G. LAUCK (Cal. Bar No. 246030) (pro hac vice petition pending)
7 GIBSON ROBB & LINDH LLP
100 First Street, 27th Floor
8 San Francisco, CA 94105
Telephone: (415) 348-6000
Fax: (415) 348-6001

9
10 Attorneys for Specially-Appearing Defendant to
Complaint in Intervention, Navigators Insurance Co.,
11 dba Navigators Protection & Indemnity

FILED
DISTRICT COURT OF GUAM

APR - 3 2007 nba

MARY L.M. MORAN
CLERK OF COURT

12 IN THE DISTRICT COURT OF GUAM

13 TERRITORY OF GUAM

14

15 UNITED STATES OF AMERICA,) Civil Case No.: 06-00011
16 Plaintiff,)
17 vs.)
18 MARWAN SHIPPING & TRADING CO.,)
19 FIVE SEAS SHIPPING CO., LLC, and S.J.)
GARGRAVE SYNDICATE 2724, *in*)
personam,)
20 Defendants.)
21 AND CROSS-CLAIMS,)
22 COUNTERCLAIMS, AND CLAIM IN) Complaint Date: April 19, 2006
INTERVENTION) Trial Date: None Set
23

24 **PETITION OF STANLEY L. GIBSON TO APPEAR PRO HAC VICE**

25 COMES NOW STANLEY L. GIBSON, and moves pursuant to GR17.1(d), Local Rules
26 of the District Court of Guam, for admission to practice *pro hac vice* in the above-captioned
27 matter before the District Court of Guam, District of Guam, and submits the following
28 information required the Court and its Local Rules:

APPLICATION OF STANLEY L. GIBSON FOR ADMISSION PRO HAC VICE
Civ Case No 06-00011, Our File No 2900 81

ORIGINAL

1 1. I do not reside in Guam;
2 2. I am not regularly employed in Guam; and,
3 3. I am not regularly employed in business, professional or other activities in Guam.
4 4. My residence is 70 La Salle Avenue, Piedmont, California, 94611.
5 5. My office address is: 100 First Street, Suite 2700, San Francisco, California,
6 94105.

7 6. I have been admitted to practice law in the following courts on the following
8 dates: State of California (1971); United States District Court for the Northern District of
9 California, (1971); United States Court of Appeals for the Ninth Circuit, (1971); Supreme Court
10 of the United States of America (1998).

11 7. I am a partner in the law firm of Gibson Robb & Lindh LLP, which has been
12 retained to be counsel for Specially-Appearing Defendant to Inchcape's Amended Complaint-In-
13 Intervention, Navigators Insurance Company, dba Navigators Protection & Indemnity in the
14 above-captioned matter.

15 8. I am in good standing and eligible to practice in each of the above listed courts.

16 9. I am not currently suspended or disbarred in any other court.

17 10. I have not within the last one year applied for admission pro hac vice to this
18 Court.

19 11. I designate the following attorney as co-counsel in this matter:

20 THOMAS C. STERLING
21 BLAIR STERLING JOHNSON MARTINEZ & LEON GUERRERO
22 A Professional Corporation
23 Suite 1008 Pacific News Building
24 238 Archbishop F.C. Flores Street
25 Hagatna, Guam 96910-5205
26 Telephone: (671) 477-7857
27 Fax: (671) 472-4290

28 12. I solemnly swear that I will support the Constitution of the United States, the
Organic Act of Guam, the applicable statutes of the United States and the laws of the territory of
Guam; that I will maintain the respect due to the Courts of Justice and Judicial Officers and that I
will demean myself uprightly as an attorney at law; and to abide by the Code of Professional
Responsibility of the American Bar Association.

1 13. I hereby declare under penalty of perjury under the laws of Guam and the United
2 States of America that the foregoing statements are true and correct.

3 Executed this 26 day of Feb, 2007, at San Francisco, California.

Stanley L. Gibson
STANLEY L. GIBSON

Attorneys for Specially-Appearing
Defendant to Complaint in Intervention,
Navigators Insurance Co., dba
Navigators Protection & Indemnity

CONSENT OF DESIGNATED LOCAL CO-COUNSEL

I, Thomas C. Sterling, an attorney and active member in good standing of the Bar of Guam who resides in and has an office in this District, am co-counsel for Specially-Appearing Defendant to Inchape's Amended Complaint-In-Intervention, Navigators Insurance Company, dba Navigators Protection & Indemnity, hereby consent to the foregoing petition of Ellen G. Lauck for pro hac vice admission, and the designation contained therein, pursuant to GR 17.1(e), Local Rules of the District Court of Guam.

DATED this 30th day of March, 2007.

Respectfully Submitted,

THOMAS C. STERLING

Exhibit B

1 THOMAS C. STERLING
2 BLAIR STERLING JOHNSON
3 MARTINEZ & LEON GUERRERO
4 A PROFESSIONAL CORPORATION
5 SUITE 1008 PACIFIC NEWS BUILDING
6 238 ARCHBISHOP F.C. FLORES STREET
7 HAGĀTÑA, GUAM 96910-5205
8 TEL: (671) 477-7857
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10 STANLEY L. GIBSON (Cal. Bar No. 047882)
11 (pro hac vice petition pending)
12 ELLEN G. LAUCK (Cal. Bar No. 246030)
13 (pro hac vice petition pending)
14 GIBSON ROBB & LINDH LLP
15 100 FIRST STREET, 27TH FLOOR
16 SAN FRANCISCO, CA 94105
17 TELEPHONE: (415) 348-6000
18 FAX: (415) 348-6001

19 *Attorneys for Specially-Appearing Defendant to
20 Complaint in Intervention, Navigators Insurance Co.,
21 dba Navigators Protection & Indemnity*

22 **IN THE DISTRICT COURT OF GUAM**

23 UNITED STATES OF AMERICA,) CIVIL CASE NO. 06-00011
24)
25 Plaintiff,)
26)
27 vs.)
28)
29 MARWAN SHIPPING & TRADING CO., FIVE)
30 SEAS SHIPPING CO., LLC, and S.J.)
31 GARGRAVE SYNDICATE 2724, *in personam*,)
32)
33 Defendants.)
34)
35 AND CROSS-CLAIMS, COUNTERCLAIMS,)
36 AND CLAIM IN INTERVENTION)
37)
38)

39 **ORDER GRANTING PETITIONS OF
40 STANLEY L. GIBSON AND
41 ELLEN G. LAUCK FOR
42 ADMISSION *PRO HAC VICE***

43 **WHEREAS**, the petitions of Stanley L. Gibson and Ellen G.
44 Lauck to appear *pro hac vice* in District Court of Guam, District
45 of Guam in the above-captioned matter, have come regularly before
46 the Court for its review pursuant to GR 17.1(d), Local Rules of
47 the District Court of Guam;

1 **WHEREAS**, the Petitions are supported by the necessary
2 designation and consent of local co-counsel as required by GR
3 17.1(e), Local Rules of the District Court of Guam;

4 WHEREAS, it appears to the satisfaction of the Court that
5 the Petitions are meritorious, that Mr. Gibson and Ms. Lauck are
6 attorneys admitted to and in good standing with the State Bar of
7 California and various District Courts and Court of Appeals of
8 the United States, that said Petitioners have each paid the
9 prescribed fee for admission, that said Petitioners have each
10 signed the prescribed oath; and that good cause otherwise appears
11 thereon:

13 **IT IS HEREBY ORDERED** that the Petitions of Stanley L. Gibson and
14 Ellen G. Lauck for admission to practice *pro hac vice* before the
15 District Court of Guam are GRANTED and that the said petitioners
16 be admitted upon signing the roll of attorneys.
17

/s/ **Joaquin V.E. Manibusan, Jr.**
U.S. Magistrate Judge
Dated: Apr 12, 2007

E62\52285-01
G:\WORDDOC\PLD\TCS\313-PROPOSED ORDER
GRANTING PETITIONS RE USA V MARWAN ET AL.DOC

Exhibit C



Protection & Indemnity

ORIGINAL

THIS CERTIFICATE IS NOT ASSIGNABLE OR OTHERWISE TRANSFERABLE
WITHOUT THE EXPRESS AGREEMENT OF THE INSURER

CERTIFICATE OF PROTECTION & INDEMNITY
INSURANCE NO. LN04PNI000169

THIS IS TO CERTIFY THAT *Navigators Protection and Indemnity* is authorised by *Navigators Insurance Company* to sign and issue this Certificate on their behalf.

We hereby declare under the authority of *Navigators Insurance Company* that Insurance has been effected for

ASSURED: Marwan Shipping & Trading Co

VESSEL: 'AJMAN 2'

PERIOD: 11th June 2004 to 10th June 2005 LST

Place of Issue LONDON

Date 16th June 2004

Signed


Authorised Signatory
Navigators Protection and Indemnity

This Certificate is not valid unless signed by
NAVIGATORS PROTECTION AND INDEMNITY

In the event of any loss or damage or occurrence which may result in a claim under this insurance immediate notice must be given to *Navigators Protection and Indemnity*.

NAVIGATORS INSURANCE COMPANY

2) Liabilities for Persons other than Crew

Liability to pay damages or compensation for personal injury, illness or death of any person, other than the persons specified in Section A1) and hospital, medical or funeral expenses incurred in relation to such injury, illness or death, provided always that Cover under this Section is limited to liabilities arising out of a negligent act or omission on board or in relation to a vessel named herein or in relation to the handling of her cargo from the time of receipt of that cargo from the shipper or pre-carrier at the port of shipment until delivery of that cargo to the consignee or onward carrier at the port of discharge.

3) Liabilities for Damage caused to other Vessels

- I. Liability for loss of or damage to any other vessel, craft, cargo or other property on such other vessel or craft, caused by collision with the vessel named herein, only insofar as such liability exceeds the Agreed Insured Hull Value of the vessel and its appurtenances immediately prior to such collision; or for such other proportion as may have been agreed in writing in advance by the Insurer.
 - a. Claims under this clause shall be settled on the principle of cross-liabilities.
 - b. Notwithstanding the foregoing, if any one or more of the various liabilities arising from such collision has been compromised, settled or adjusted without the written consent of the Insurer, the Insurer will be relieved of liability for any and all claims hereunder.
- II. Liability for loss of or damage to any other vessel, craft or to property on such other vessel or craft, not caused by collision, provided such liability does not arise by reason of a contract made by the Insured.

Where there would be a valid claim hereunder but for the fact that the damaged property belongs to the Insured, the Insurer will be liable as if such damaged property belonged to another but only to the extent of the excess over any amount recoverable under any other insurance relating to such property.

4) Liabilities for Loss or Damage to the Property of Third Parties

Liability to third parties for damage to any dock, pier, harbour, jetty, buoy, lighthouse, breakwater, structure, beacon, cable, or to any fixed or movable object or property whatsoever, except another vessel or craft, or property on another vessel or craft.

Where there would be a valid claim hereunder but for the fact that the damaged property belongs to the Insured, the Insurer will be liable as if such damaged property belonged to another, but only to the extent of the excess over the amount recoverable under such other insurance(s) which may be in place.

5) Liabilities for the Removal of a Wreck

Liability for the costs or expenses of, or incidental to, the removal of the wreck of a vessel named herein when such removal is compulsory by law, provided that:

- I. There shall be deducted from such claim for costs or expenses, the value of any salvage from or which might have been recovered from the wreck, inuring, or which might have inured, to the benefit of the Insured.
- II. The Insurer shall not be liable for such costs or expenses which would be covered by the Insured's Hull & Machinery policy as outlined in Section C clause (1) of this Policy or claims arising out of hostilities or war-like operations, whether before or after any declaration of war.

Exhibit D

Forrest Booth

From: Myles Sunley [Myles.Sunley@limit.co.uk]
Sent: Tuesday, October 02, 2007 9:46 AM
To: Forrest Booth
Cc: Chris Zavos; neil.hawkins@xchanging.com
Subject: "Ajman II"

Forrest

Thank you for advising us of the US Government's decision. We now have half of the 'target' figure in place.

I note your comments in respect of the pier damage claim. However, I do not recall these issues being raised in our telephone call. As you are aware, Navigators have wish to conclude both the claims in the same negotiation (our interest will, of course, be only for pollution).

REDACTED

Regards

Myles

Myles A Sunley BSc (Hons) ACII
Chartered Insurer
Senior Claims Adjuster
O'Farrell Syndicate 1036 at Lloyd's
LIMIT